REMARKS

Claims 2-27 and 29-56 are pending. Claims 34, 35, 39, 40, 53 and 56 were amended to address the Examiner's specification objection. Claim 7 was amended and claim 34 was further amended to explicitly recite an inherent feature of the claimed invention.

No new matter was added. The new phrase added to claims 34, 35, 39, 40, 53 and 56 is fully supported by at least paragraph [00054] on page 14, lines 21-26 of the present specification.

Request for Interview Prior to Formal Action on Amendment

Applicants request an interview prior to formal action on this response. An "Applicant Initiated Interview Request Form" accompanies this response. Please contact Applicants' undersigned representative to schedule the interview.

Specification Objection

The specification was objected to as allegedly failing to provide a proper antecedent basis for certain preamble language in claim 34. Applicants believe that the preamble language is fully supported by at least paragraph [00054] on page 14, lines 21-26 of the present specification because an artisan in the computer field would understand that the objected to phrase is identical in meaning to the text in the present specification. However, to advance prosecution of the application, the objected to text was amended to more closely match the wording in paragraph [00054] of the present specification. Accordingly, withdrawal of this objection is respectfully requested.

Prior Art Rejections

Claims 2-3, 5-12, 14, 18, 23, 26, 27, 29-30, 32-39, 41, 45, 50, 53-56 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Claessens et al. (hereafter, "Claessens") in view of Rehkopf.

Claims 4 and 31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Claessens et al. in view of Rehkopf and Official Notice.

Claims 13 and 40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Claeseens in view of Rehkopf and further in view of Easty et al. (hereafter, "Easty").

These rejections are respectfully traversed for at least the reasons set forth below.

1. Claessens

Claessens discloses a system and method for network performance testing. This has nothing to do with the claimed invention which relates to optimizing network configuration settings for a user's client machine, not a network, by adjusting network configuration settings of the user's client machine. While a user's client machine communicates with other devices via a network, such as shown in Fig. 1 (see network connection 150), the claimed invention does not test or affect any network parameters. Claessens does not even discuss any element equivalent to a user client machine that is configured to have its network configuration settings adjusted. At best, column 7, line 65 through column 8, line 14 of Claessens discusses a web server/user interface 310 that functions to control the network performance testing. However, no adjustments are made to the network configuration settings of the user interface device 310. Thus, Claessens is not relevant to the claimed invention and fails to disclose or suggest any of the claimed steps.

As highlighted by the Examiner, Claessens discloses test configuration data and stores a plurality of different test configurations. As discussed on column 10, lines 15-24 of Claessens, each test configuration has a predetermined identifier that is associated with network-related parameters such as a predetermined packet rate, packet size, test duration, packet generators, packet receivers and one or more devices to be tested. As further discussed in column 10, lines 33-60 of Claessens, a system administrator selects one of the plurality of test configuration identifiers. The network is then configured based on the network-related parameters associated with that identifier, and a network performance test is conducted using the configured network. Thus, at best, Claessens discloses defining a plurality of groups of network-related parameters for configuring a network. In contrast to Claessens, the claimed invention recites defining a plurality of groups of network configuration settings for a user's client machine.

The Examiner admits that Claessens does not disclose steps (d) or (e) of claims 7 and 34. Applicants further add that Claessens also does not disclose step (f) of claims 7 and 34.

2. Rehkopf

As discussed in the Appeal Brief, Rehkopf discloses a method for benchmarking and optimizing end-to-end processing performance of a computer network system. The method operates as follows:

a. System performance variables are selected.

b. A baseline performance test is run using an initial set of values for the system performance variables to produce a benchmark system performance.

c. The system performance variables are fixed at the initial set of values.

d. A floating variable is selected from among the system performance variables.

e. Subsequent tests are run with the floating variable set to different values, and system performance indicators that result from each subsequent test are recorded. The system performance indicators are compared to the benchmark system performance. An optimal value of the floating variable is then recorded that optimizes the system performance indicators.

f. Another floating variable is then selected from among remaining system performance variables that have not yet been selected to be the floating variable.

g. Steps (e) and (f) are repeated until all of the system performance variables have been selected as the floating variable.

h. Each of the system performance variables are then fixed to its optimal value.

Rehkopf's method can be characterized as a "brute force" method in that each system performance variable is individually tested while keeping the other system performance variables constant. (The system performance variable being tested during each iteration is the "floating variable.")

Rehkopf's method has at least the following disadvantages:

a. The test process may take a long amount of time because each system performance variable must be individually tested throughout its entire potential range of values. If there are a large number of system performance variables, the test time may be extremely long.

b. After each system performance variable is individually tested, its "optimal value" is determined only in view of the initial values of the other system performance variables (which remain fixed at their initial values during the testing). However, it is very common that certain system performance variables affect other system performance variables. Thus, each system

performance variable may actually have a better (i.e., more optimal) value if one or more of the other system performance variables were set to a value other than their initial values. Rehkopf's method has no process for determining the best set of system performance variables.

c. No prior knowledge of previously determined optimal system performance variables is used in Rehkopf. Such knowledge could potentially speed up the testing process by reducing or eliminating the number of system performance variables that would need to be tested, or by reducing the range of values to be tested for the current floating variable.

3. Patentability of independent claims 7 and 34 over Claessens in view of Rehkopf

Amended claim 7 reads as follows:

> 7. A method of optimizing network configuration settings for a user's client machine, the method comprising:
> (a) defining a plurality of groups of network configuration settings for the user's client machine;
> (b) establishing a network connection between the client machine and a remote server;
> (c) selecting one of the groups of network configuration settings for the client machine from the defined groups of settings;
> (d) automatically conducting one or more performance tests using the selected network configuration settings during the established network connection;
> (e) repeating steps (c) and (d) for one or more other groups of network configuration settings during the established network connection; and
> (f) automatically adjusting the network configuration settings of the client machine defined in the groups based on the results of the performance tests, wherein the adjusted network configuration settings are settings that optimize the performance of the client machine.

In the outstanding Office Action, the Examiner asserts that steps (a)-(c) are met by Claessens. However, as discussed above, Claessens relates to network performance testing which has nothing to do with the claimed invention which relates to optimizing network configuration settings for a user's client machine, not a network, by adjusting network configuration settings of the user's client machine. Accordingly, steps (a)-(c) are not disclosed in Claessens.

Furthermore, even if Claessens was modified in view of Rehkopf as suggested by the Examiner, the resultant modified Claessens would still lack all of the steps in claim 7.

In the outstanding Office Action, the Examiner relies upon Rehkopf as disclosing concepts similar to steps (d) and (e) of claims 7 and 34, and asserts that it would have been obvious to modify Claessens to incorporate the features of these steps. That is, the Examiner's position appears to be that it would have been obvious to modify Claessens to conduct one or more additional network performance tests using parameters from different groups of network-related parameters for configuring a network (i.e., different test configuration identifiers) in Claessens). Applicants respectfully traverse this position.

First, Rehkopf does not disclose selecting a different group of performance variables. In the iterative step (g) of Rehkopf discussed in section 2 above, another floating variable is selected from among remaining system performance variables that have not yet been selected to be the floating variable, and the remaining variables are set or reset to their initial values. If the initial set of values (or a subset of the initial set of values) is considered to be equivalent to the claimed group of network configuration settings, at best, Rehkopf discloses defining only one group of network configuration settings. Rehkopf always reverts back to the same initial set of values (i.e., the same group of network configuration settings) every time that the floating variable is changed. Thus, the concept of defining a plurality of groups of network configuration settings and conducting performance tests on the different groups of defined network configuration settings is completely absent from Rehkopf.

At best, modifying Claessens in view of Rehkopf would result in performing network performance tests by modifying only one of the parameters associated with the one selected test configuration identifier (Claessens only selects one test configuration identifier), and then repeating the network performance tests by modifying another (different) parameter in the one selected test configuration identifier. For example, the first test may vary the packet rate and the second test may vary the packet size. The parameters that are not being modified would remain at their initial values, exactly as disclosed by Rehkopf. There is simply nothing in Rehkopf to suggest modifying Claessens so that a different test configuration identifier (and thus a different group of parameters) would be selected for subsequent testing.

Stated simply, Rehkopf does not disclose the concept of conducting subsequent performance tests using a different group of settings. Therefore, Rehkopf cannot make up for the above-noted deficiencies in Claessens and thus even if Claessens was modified as suggested by the Examiner, the resultant modified Claessens would still lack at least the above-highlighted

features in steps (d) and (e), as well as step (f) of claim 7. To summarize, Applicants are not asserting that Claessens cannot be modified based on disclosures in Rehkopf. Instead, Applicants are asserting that the modifications suggested by Rehkopf would not lead to Applicant's claimed invention.

Second, Claessens relates to network performance testing which has nothing to do with the claimed invention which relates to optimizing network configuration settings for a user's client machine, not a network, by adjusting network configuration settings of the user's client machine. Thus, even if Claessens was modified in view of Rehkopf as proposed by the Examiner, the resultant modified Claessens would still not meet any of the claimed steps which all relate to network configuration settings of a user's client machine. Furthermore, even if Claessens was modified in view of Rehkopf to cause the selection of a different test configuration identifier (and thus a different group of parameters) for subsequent testing, the resultant modified Claessens would still not meet any of the claimed steps which all relate to network configuration settings of a user's client machine. Of course, Applicants do not believe that this latter modification is suggested by the references, but this point illustrates just how different the applied references are from the claimed invention.

Claim 34 is believed to be patentable over Claessens in view of Rehkopf for the same reasons as claim 7.

4. Patentability of dependent claims 13 and 40 over Claessens in view of Rehkopf and Easty

Claim 13 reads as follows (underlining added for emphasis):

> 13. The method of claim 7 further comprising:
> (g) storing on the remote server, groups of network configuration settings and aggregate test results associated with other client machines that previously established a network connection with the remote server; and
> (h) the user's client machine receiving groups of network configuration setting recommendations from the remote server based on the groups of network configuration settings and the aggregate test results stored on the remote server.

Easty relates to aggregating past content selections of users so as to configure an endpoint server with content that is most likely to be requested. The scheme in Easty operates as follows:

a. Information received from users are analyzed to generate an "aggregate profile of the endpoint server." The "aggregate profile of the endpoint server" represents the collective characteristics and preferences of a plurality of users served by the endpoint server. For example, the preferences may be defined by the frequency that a particular content item or type of content is requested (column 3, lines 2-4).

b. The central server selects a subset of master contents stored in a central database based on an analysis of the aggregate profile of the endpoint server.

c. The selected subset of the master contents is stored in the endpoint database for distribution to the users.

Using aggregation concepts for content selection queuing is a completely different and non-analogous concept than using aggregation concepts for selecting network configuration settings. That is, Easty is directed to content selection, whereas the present invention is directed to network configuration setting selection. Easty is not directed to the same problem in the art addressed by the present invention, nor is Easty in the same field of endeavor as the present invention. Easty is thus non-analogous prior art and therefore cannot be combined with Claessens or Rehkopf to provide the missing limitations in Claessens and Rehkopf related to aggregate test results and the use of such results to receive recommendations for network configuration settings.

Claims 13 and 40 further recite that a remote server stores network configuration settings and aggregates test results associated with other client machines that previously established a network connection with the remote server, and that a user's client machine receives network configuration setting recommendations from the remote server, based on the network configuration settings and the aggregate test results stored on the remote server. No such limitation is even remotely disclosed or suggested in Claessens or Rehkopf.

In the outstanding Office Action, the Examiner admits that Claessens and Rehkopf lack these limitations and relies upon Easty for such limitations. However, as discussed above, Easty is directed to a completely different invention, and is non-analogous prior art, and thus cannot be combined with Claessens or Rehkopf to make up for the deficiencies in these references.

In section 8 on page 11 of the Office Action dated May 2, 2007, the Examiner responded that Rehkopf and Easty are analogous prior art because both relate to "data transferred over a network." While the Examiner has properly identified the well-known test for "analogous art,"

the Examiner's explanation that both relate to "data transferred over a network" is an overly broad characterization of the references that bears no relationship to the claim limitation that led the Examiner to rely upon Easty. Millions of prior art references relate to "data transferred over a network." However, having this fact in common does not provide sufficient motivation to identify all such references as being analogous art for purposes of combining such references to meet any limitations in a claim, including limitations that do not relate to network data communications. The Examiner's reasoning is no different in nature than arguing that all references that have "computers" or "memory" in them are analogous art, and thus are properly combinable to meet claim limitations that have nothing to do with computers or memory.

5. Patentability of remaining dependent claims

The remaining dependent claims are believed to be patentable over the applied references for at least the reason that they are dependent upon allowable base claims and because they recite additional patentable elements and steps.

Conclusion

Insofar as the Examiner's rejections were fully addressed, the instant application is in condition for allowance. Issuance of a Notice of Allowability of all pending claims is therefore earnestly solicited.

Respectfully submitted,

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